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### **Advisory Opinion 08-013**

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2007). It is based on the facts and information available to the Commissioner as described below. All public data the Commissioner relied upon to issue this opinion are available for public inspection and copying at the office of the Information Policy Analysis Division (IPAD), unless the data have been disposed of in compliance with the state Records Management Act.

#### **Facts and Procedural History:**

On May 2, 2008, IPAD received a letter dated April 29, 2008, from Sue Uhrinak, City of Cass Lake. In her letter, Ms. Uhrinak asked the Commissioner to issue an advisory opinion regarding issues related to the Cass Lake Economic Development Authority (EDA).

IPAD, on behalf of the Commissioner, wrote to Pat Finn, Chair of the EDA, in response to Ms. Uhrinak's request. The purposes of this letter, dated May 13, 2008, were to inform him of Ms. Uhrinak's request and to ask him to provide information or support for the EDA's position. On June 4, 2008, IPAD received a response, dated May 26, 2008, from Mr. Finn.

A summary of the facts as provided by Ms. Uhrinak is as follows. She wrote in her opinion request:

The City of Cass Lake created an [EDA] with an enabling resolution on May 22, 2002 and adopted its By-Laws September 11, 2002. I...submitted a written request to the Chairperson of the EDA on March 18, 2008...requesting copies of the Minutes of their meetings and actions taken by the board. I have received no response...as of today's date.

Ms. Uhrinak attached a copy of her data request to her opinion request. She further wrote:

The EDA is to hold regularly scheduled meetings on the 1<sup>st</sup> Thursday of each month. For the past 4 meetings, there have been no notices posted at the offices. The EDA holds it's [sic] meetings at City Hall and there are 2 bulletin boards that are used for postings meetings. I work at City Hall and have never seen any posting for the regular EDA meetings on either of the bulletin boards.

Ms. Uhrinak also attached to her opinion request a copy of an April 24, 2008, email from Scott Anderson, the City Attorney. In his email, Mr. Anderson states:

...When a City creates an EDA, as Cass Lake did in 2002 in Resolution 7-2002, it creates a separate and distinct legal entity that is a political subdivision of the State of Minnesota, with the power to sue and be sued. Minn. Stat. Section 469.091....

As a political subdivision of the State of Minnesota, the EDA is a public body. As a public body, and as an authority created pursuant to law and local resolution, it is subject to the requirements of the open meeting law and the data practices act.

### Issues:

Based on Ms. Uhrinak's opinion request, the Commissioner agreed to address the following issues:

1. Did the Cass Lake Economic Development Authority comply with Minnesota Statutes, Chapter 13, with regard to a request for access to copies of minutes from certain meetings (2003 – February 3, June 2, October 6, November 3, December 1; 2004 – all meetings; 2005 all meetings; 2006 – all meetings; 2007 all meetings; 2008 – January and February) and annual reports from years 2003, 2004, 2005, 2006, and 2007?
2. Did the Cass Lake Economic Development Authority Board comply with Minnesota Statutes, Chapter 13D.04, with regard to providing notice for the past four regular Board meetings (January, February, March, and April 2008)?

### Discussion:

As Mr. Anderson discussed in his April 24, 2008, email, Minnesota Statutes, section 469.091, subdivision 1, authorizes cities to establish economic development authorities. Pursuant to subdivision 2 of section 469.091, economic development authorities are political subdivisions and public bodies.

Political subdivisions are subject to the requirements of Chapter 13 (see section 13.02, subdivision 11), and public bodies are subject to the requirements of Minnesota Statutes, Chapter 13D (see Minnesota Statutes, section 13D.01, subdivision 1). Thus, the Cass Lake EDA is subject to both Chapter 13 and Chapter 13D. Mr. Finn did not provide information indicating the EDA has appointed or designated an individual to serve as the responsible authority. Assuming that has not happened, Mr. Finn, in his role as Chair, presumably fills the role of responsible authority.

***Issue 1:*** *Did the Cass Lake Economic Development Authority comply with Minnesota Statutes, Chapter 13, with regard to a request for access to copies of minutes from certain meetings (2003 – February 3, June 2, October 6, November 3, December 1; 2004 – all meetings; 2005 all meetings; 2006 – all meetings; 2007 all meetings; 2008 – January and February) and annual reports from years 2003, 2004, 2005, 2006, and 2007?*

Pursuant to Minnesota Statutes, section 13.03, when a government entity receives a data request from an individual who is not the subject of the data, the entity is required to respond in an appropriate and prompt manner and within a reasonable time. (See section 13.03, subdivision 2(a), and Minnesota Rules, section 1205.0300.)

In his comments to the Commissioner, Mr. Finn wrote:

...I have only been associated with the EDA officially since possibly September of 2006, and didn't even become chair until February 7, 2007. And most of the meetings that we held never even had a quorum to officially hold a meeting. So therefore, if there are missing minutes for the past 6 years, then not only were the past EDA secretary's [sic] not doing their jobs, but the City Clerks as well.

As far as 2007, when we did hold official meetings, the minutes were left with the EDA file along with the key for the door, at the City Council Chambers at close of the meeting, or dropped off the following day....

As far as giving any reports to the City Council, including annual reports, nobody has ever asked for them....

In closing, I would like to state that the EDA is still trying to establish protocol....

The Commissioner previously has opined that when a government entity responds to a data request, it should inform the requestor that the data do not exist, or inform the requestor that the data are classified as not public, or provide the data to the requestor. Ms. Uhrinak wrote that she had not received any response, which is not appropriate. Here, because minutes and annual reports are public data, Mr. Finn, as the person in charge of the EDA, needs to give Ms. Uhrinak copies of the minutes and annual reports she has requested or inform her that they do not exist.

If the minutes and annual reports do not exist, the EDA faces some potential issues related to its compliance with the Official Records Act (Minnesota Statutes, section 15.17). As a government entity, the EDA is subject to section 15.17, which requires that entities create and maintain official records. Official records must be kept for time periods as prescribed in an entity's records retention schedule (see Minnesota Statutes, section 138.17). Both meeting minutes and annual reports are listed in the General Records Retention Schedule for Cities as official records that must be kept permanently.

***Issue 2: Did the Cass Lake Economic Development Authority Board comply with Minnesota Statutes, Chapter 13D.04, with regard to providing notice for the past four regular Board meetings (January, February, March, and April 2008)?***

As stated above, the EDA Board is subject to Chapter 13D, the Open Meeting Law.

Section 13D.04, subdivision 1, prescribes how public bodies must provide notice of their regular meetings: "A schedule of the regular meetings of a public body shall be kept on file at its primary offices." This notice should include the date, time, and location of the meetings.

In her opinion request, Ms. Uhrinak wrote that the EDA is to hold regularly meetings on the 1<sup>st</sup> Thursday of every month. She stated that she had not seen posted notices for the months of January, February, March, or April 2008.

In his comments to the Commissioner, Mr. Finn wrote:

As far as the second question of posting our regular meeting times and dates, again the clerk's [sic] were responsible for this as well. Why were they stopped after December 2007?  
We

did change the day and time of our meetings at that time. I myself talked to [the deputy clerk] about the changes and asked her to be sure they were posted. At this point in time, I never thought I needed to walk around with a recorder and tablet to document my every move. Again, the Clerk's [sic] control not only the bulletin but whether the minutes are maintained as well.

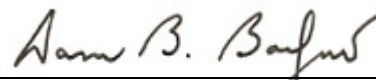
Mr. Finn states the EDA Board changed the day and time of its meetings, but he did not state when the Board meets or provide any information to demonstrate the Board has a schedule of its regular meetings on file at its primary offices. The policy behind requiring public bodies to keep meeting notice schedules on file is so that members of the public, such as Ms. Uhrinak, know when and where the public body is meeting. Here, the Commissioner cannot determine whether the EDA Board has complied with the notice requirement in section 13D.04, subdivision 1. If a schedule of the regular Board meetings is not now on file at the EDA primary office, the Board should promptly prepare one and make sure it is on file for public perusal.

### **Opinion:**

Based on the facts and information provided, my opinion on the issues that Ms. Uhrinak raised is as follows:

1. The Cass Lake Economic Development Authority did not comply with Minnesota Statutes, Chapter 13, with regard to a request for access to copies of minutes from certain meetings (2003 – February 3, June 2, October 6, November 3, December 1; 2004 – all meetings; 2005 all meetings; 2006 – all meetings; 2007 all meetings; 2008 – January and February) and annual reports from years 2003, 2004, 2005, 2006, and 2007.
2. The Commissioner cannot determine whether the Cass Lake Economic Development Authority Board complied with Minnesota Statutes, Chapter 13D.04, with regard to providing notice for the past four regular Board meetings (January, February, March, and April 2008).

Signed:

  
 Dana B. Badgerow  
 Commissioner

Dated:

June 17, 2008